

Short notes on:

## **SPOUSAL MAINTENANCE PENDING DIVORCE LITIGATION? IT IS POSSIBLE!**

### ***Introduction***

Often times, the less financially secure spouse will not be in a financial position to institute or defend a Divorce action, with fear of bearing the highest burden of divorce. Divorce is not an easy process and the ending of any marriage is difficult. It triggers upsetting feelings which result in both spouses involved not wanting to work together to reach an amicable solution and the process is often marred with delays.

This often leaves the spouse who is financially dependent on the other in a dilemma because the economic costs of divorce tend to fall more heavily on less financially secure spouse, especially during separation. This results in the spouse experiencing financial hardship due to a loss of household income and the lower standard of living compared to the one that used to be provided by the other spouse. Therefore, the issue of costs and maintenance pending divorce litigation is often a crucial issue.

### ***Interim Relief provided***

Rule 43 of the Uniform Rules of Court and Rule 58 of the Magistrate's Court were created to provide interim relief in pending matrimonial matters in respect of maintenance and costs. The Applicant can approach the court on an urgent basis, for interim payment in terms of Rule 43 of the Uniform Rules of Court and Rule 58 of the Magistrate's Court depending on the jurisdiction of the Court.

This application is brought through a Notice of motion wherein the Applicant may claim interim payment from the Respondent for the interim care for the child(ren), maintenance for the spouse, settlement of spouse's legal fees, plus monthly maintenance fee and child support until the main action is finalised.

### ***Requirements for an interim relief***

The Applicant seeking such relief has to prove on a balance of probabilities that she/ he is entitled to the relief depending on the living standards of the parties. The pinnacle of the application in this regard will be based on the Applicant's insufficient means and that the respondent through a proper assessment can afford to meet the relief being sought

### **Conclusion**

Therefore, as a spouse, you should not wait for the divorce to be finalised to claim maintenance either for yourself or your children while engaged in divorce litigation, importantly when you lack financial means to institute or defend a divorce. Often, especially during the settlement negotiations, things tend to be put on hold, therefore delaying the process. As a spouse, Rule 43 and Rule 58 are the legal remedies available to you avert financial prejudice, uphold your best interests and that of the minor child(ren) pending divorce litigation.

For your Family Law related matter, Contact an Attorney at SchoemanLaw Inc.

